



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2020

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.6762 of 2020

(Through Video conferencing)

WEB COPY

G.Munishwari

...Petitioner

-Vs-

1.The Director General of Police
Kamarajar Salai
Mylapore, Chennai - 600 004.

2.The Commandant
Tamilnadu Special Police
7th Battalion
Pochampalli
Dharmapuri District.

...Respondents

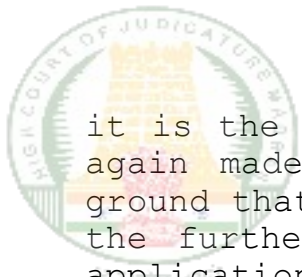
Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.A2/6377/2018 dated 22.01.2020 and quash the same and consequently direct the 2nd respondent to give compassionate appointment to the petitioner's daughter namely G.Ilavarasi Pavithra herein in any one of the posts to which she is suitable.

For Petitioner : Mr.A.Rajaram
For Respondents : Mr.K.Mu.Muthu,
Additional Government Pleader.

ORDER

The prayer sought for in this writ petition is to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.A2/6377/2018 dated 22.01.2020 and quash the same and consequently direct the 2nd respondent to give compassionate appointment to the petitioner's daughter namely G.Ilavarasi Pavithra in any one of the posts to which she is suitable.

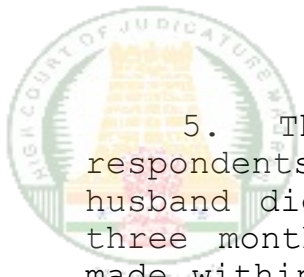
2. The petitioner's husband, who was working as Nayak in the respondents police department, died on 06.04.1998, due to an accident leaving behind his wife i.e., the petitioner and his three months old daughter, who born on 13.01.1998. Thereafter, it is the case of the petitioner that, in the year 2001, i.e., within three years from the date of death of her husband, application has been made to the respondents seeking compassionate appointment for her daughter, who was at that time three years old child. Thereafter,



it is the claim of the petitioner that in 2005, an application was again made and that was also rejected by the respondents on the ground that within three years, no application has been made. It is the further case of the petitioner that while rejecting the said application, a stand was taken by the respondents that since the daughter of the petitioner was only minor, after she attains majority, the case of the petitioner would be considered for giving appointment on compassionate ground to her daughter depending upon the prevailing rule at that time. Thereafter some applications and communications have been made. Ultimately on 21.11.2019, a latest application was made by the petitioner to the second respondent stating that her daughter one G.Ilavarasi Pavithra, who born on 13.01.1998, has attained majority and also she has completed her undergraduate degree course and therefore, based on her educational qualification, priority for giving appointment on compassionate ground can be registered and accordingly appointment can be given to the petitioner's daughter. The said application dated 21.11.2019, having been considered by the second respondent, was rejected vide impugned order dated 22.01.2020. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that within three years period from the date of death of the petitioner's husband, an application was made some time in 2001. At that time, the petitioner's daughter was only three years old. Subsequently, several applications have also been made and those applications even though were rejected by the respondents, some endorsement have been made or some communications have been made by the respondents stating that the request of the petitioner with regard to the grant of compassionate appointment to her daughter would be considered, after the petitioner's daughter attained majority considering the then prevailing rule.

4. When that being the position, now the petitioner's daughter since attained majority and she is qualified to hold the post with the requisite educational qualification, the present application dated 21.11.2019 has been made, which has been rejected by the second respondent through the impugned order by stating that within the three years period, application has not been made and moreover, the respondent cannot wait for years together for the minor child of the deceased Government employee to attain majority and that count of practice cannot be made possible and in this regard, some judgments have also been made by Courts of law and therefore, on this ground, the said application of the petitioner was rejected through the impugned order. The said order, according to the learned counsel is unsustainable and bad in law and therefore, the said order has to be set aside and a suitable direction to consider the representation of the petitioner for grant of compassionate appointment can be issued.

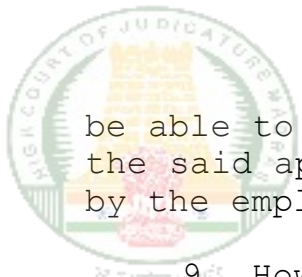


5. The learned Government Advocate appearing for the respondents however, would submit that, when the petitioner's husband died sometime in 1998, the petitioner's daughter was only three months old child and assuming that an application has been made within three years i.e., in 2001, the said application has not been available in the records of the respondents. However, even in the said application, without admitting the claim of the petitioner in this regard that she made an application in 2001, the request of the petitioner could not be considered because, the daughter of the petitioner was only three years child at that time. So far as 2005 application is concerned, the same was rejected and thereafter also some rejection orders have been made as continuously the petitioner has been making applications and the present application, which is a last one, dated 21.11.2019 is also on the same line. Therefore, the same has been rejected, after having considered the relevant rule. Therefore, the impugned order dated 22.01.2020 passed by the second respondent could not be interfered with, he contended.

6. I have considered the said submissions made by both sides and also perused the materials placed before this Court.

7. It is an admitted case that at the time of death of the petitioner's husband in the year 1998, the petitioner's daughter was only three months old child and even assuming that in the application of the year 2001, the petitioner has not requested any job for herself and only sought job for her daughter, who was admittedly, three years old child, thereafter also the same position continued and in the year 2016 only, the petitioner's daughter would have attained majority and claimed to have completed the degree course only in the year 2019. After having completed the degree course only in the year 2019, the present request has been made by the petitioner stating that her daughter shall be considered for granting appointment on compassionate ground.

8. The scheme of compassionate appointment is an exception to the regular service rule for recruitment or appointment in Government service and this exception is permitted, because, if a Government servant, who will be the head of the family, died suddenly, the family will be under penurious circumstances and in order to overcome the immediate sufferance, the scheme of compassionate appointment is being implemented by various departments of the Government and the Government undertakings and the said noble cause for giving solace to the family of the deceased Government servant can only be implemented strictly in accordance with the relevant rules and regulations governing the field. In this regard, number of decisions have been made by Courts of law including this Court, where, if any application is made immediately or within three years period from the date of death of the Government servant and during the three years period, if the legal heirs of the deceased Government servant was minor and he/she would



be able to attain majority within three years period, then certainly the said application for compassionate appointment can be considered by the employer.

9. However, in a case of this nature, where, at the time of death of the Government servant, only a three months old child was there and an application was made, of course, within three years, the same was rejected by the second respondent. Therefore, even if the second respondent, at that time, was willing to give compassionate appointment, it was not possible, because the petitioner sought for appointment only to the minor child of three years old. Therefore, it was thoroughly impossible to consider the candidature of the petitioner's daughter till she attains majority, but at the same time, the respondents ie., the employer cannot be expected to wait for a longer period, nearly about 15 to 18 years, for attainment of majority of the legal heir of the deceased Government servant and thereafter, shall consider the request for compassionate appointment. If such an indulgence is shown by the respondent on their voluntary action that would be appreciable depending upon the indigent circumstances of the family of the deceased Government servant. But at the same time, Courts cannot issue directions or mandate the respondent or the employer to consider the grant of compassionate appointment to the legal heir of the deceased Government servant, after the long period of nearly 20 years or more. If such an indulgence is shown by the Courts, it will create a floodgate, where, many such applications will be filed after long delay, even after a decade or two, stating that the family is still in indigent circumstances, therefore, the compassionate appointment shall be made to the legal heir of the deceased Government servant, who attained the majority very recently.

10. Moreover, after the death of the petitioner's husband, family pension seems to have been continuously paid to the petitioner. Therefore, the petitioner with her daughter was able to survive for all these years and also made her daughter a graduate. Those efforts taken, of course, with great difficulties, by the petitioner, can be appreciated, but at the same time, that would not be enough to give a direction by way of mandamus to the second respondent to consider the candidature of the petitioner's daughter for grant of compassionate appointment, as such kind of direction, by stretching the period of compassionate appointment from the date of death of the Government servant till the date of consideration of the application for about 20 years, will set a wrong precedent. Moreover, in the impugned order itself, a case reported in **AIR 2000 SCC 2782** in the matter of **Sanjay Kumar Vs. State of Bihar** has also been quoted by the second respondent that vacancies cannot be reserved for a dependent/claimant minor at the time of death of employee till he attains majority after a number of years and such reservations would be against the intention behind compassionate



appointment i.e., to provide immediate relief to the family of the deceased employee. The said proposition would squarely apply to the present case and therefore, this Court is not inclined to entertain this writ petition and to show any indulgence in favour of the petitioner against the impugned order. Therefore, the present writ petition fails. Accordingly, the same is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

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Sub Assistant Registrar(CS)

vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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Mylapore, Chennai - 600 004.

2.The Commandant
Tamilnadu Special Police
7th Battalion
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